

~~SEP 24 10 57 AM '96~~ Federal Communications Commission

DA 96-1534

DISPATCH
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Nocatee, Florida)

)
)
)
) MM Docket No. 96-194
) RM-8866
)
)

NOTICE OF PROPOSED RULE MAKING**Adopted: September 13, 1996****Released: September 20, 1996****Comment Date: November 12, 1996****Reply Date: November 27, 1996**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Mario Trevino ("Trevino") requesting the allotment of Channel 287A to Nocatee, Florida, as that community's first local service. Trevino submitted information in support of the proposal and indicated his intention to file an application for Channel 287A at Nocatee.

2. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Nocatee. A staff engineering analysis indicates that Channel 287A can be allotted to Nocatee consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 12.1 kilometers (7.5 miles) north of the community.¹ The site restriction will prevent a conflict with Station WXRM, Channel 288C2, Naples Park, Florida. Although Channel 287A at Nocatee is currently short spaced to Station WKZM, Channel 288A, Sarasota, Florida, and Station WYMR, Channel 288A, Sebring, Florida, Station WKZM was modified to specify operation on Channel 282A in lieu of Channel 288A and Station WYMR was modified to specify operation on Channel 289C3 in lieu of Channel 288A in MM Docket 93-65. See 11 FCC Rcd 4684 (1996). Therefore, grant of a final license for Channel 287A may be withheld until Stations WXZM and WYMR are licensed on the new

¹ The coordinates for Channel 287A at Nocatee are 27-16-07 and 81-53-41. The site is located 6.6 kilometers (4.1 miles) from Arcadia, Florida. We note that from this site, city grade coverage will be provided to the entire community of Arcadia. Arcadia is the county seat for DeSota County, has a post office and zip code, banks and is incorporated with a population of 6,488 people according to the 1990 U.S. Census. Stations WKGM(FM) and WKGM(AM), licensed to Arcadia, currently provide service to Nocatee.

channels.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groups. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community facts, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990). We do recognize that Nocatee, in DeSota County, has its own post office and zip code and that the 1995 Rand McNally Commercial Atlas indicates a population of 1,800 people. Trevino acknowledges that Nocatee does not meet the Commission's threshold requirement for community status but has provided information to demonstrate that Nocatee is a community for allotment purposes. Trevino indicates Nocatee has numerous retail outlets, social and cultural organizations and businesses that identify with the community. The local telephone book lists the Nocatee United Methodist Church, Nocatee Church of God, First Baptist Church of Nocatee, the Nocatee Elementary School and Nocatee Migrant Head Start. The telephone book also lists Fender Auto Parts, Inc., Mac-Bee Harvesting, Inc., Circle K Stores and James D. Brewer Citrus Dealer, as businesses located in Nocatee. Trevino provided letters from various merchants from Nocatee supporting the allotment of an FM frequency to the community to provide local service. Based on the above, we believe that Trevino has provided sufficient information to demonstrate that Nocatee is a community for allotment purposes and need not provide additional information regarding community status.

4. In view of the fact that the proposed allotment would provide a first local service to Nocatee, the Commission believes it would serve the public interest to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules for the community listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Nocatee, Florida	-----	287A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 12, 1996**, and reply comments on or before **November 27, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be

served on the petitioner's counsel, as follows:

Cary S. Tepper
Booth, Freret & Imlay, P.C.
1233 - 20th Street, N. W., Suite 204
Washington, D. C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission,

Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.